

JOHN HUNTINGTON, JR.
Claimant

MANPOWER TEMPORARY SERVICES
Respondent

FIREMAN'S FUND INSURANCE
Insurance Carrier

)
)
)
)
)
)
)
)
)
)

ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant was injured on September 5, 1999, while making fluorescent lights at Philips Lighting. One of the fluorescent lights broke, sending several pieces of glass into claimant's left thumb area. Claimant was taken to the emergency room in Salina, Kansas. After it was determined that the emergency room was unable to remove all of the shards of glass, as some were embedded too deep, claimant was referred to orthopedic surgeon Gary L. Harbin, M.D. Dr. Harbin performed surgery on September 6, 1999, removing eight or nine pieces of glass fragments from the left thumb area.

On September 10, 1999, claimant was again examined by Dr. Harbin. At that time, claimant complained that his left thumb was not moving and that he was experiencing some numbness in the thumb. Dr. Harbin opined that he doubted if the small fragments of glass and the nature of injury would have so injured the various structures in the claimant's hand, but he noted that the hand would need to be explored if function did not return quickly.

Claimant's hand function did not return, and a second surgery was performed on September 14, 1999. At that time, claimant underwent a carpal tunnel release and exploration of the flexor tendons of the left wrist in order to identify the cause of the left thumb difficulties. In examining the thumb, the doctor found the flexor tendon going to the thumb was missing. The doctor speculated that claimant had previously suffered a chronic flexor tendon rupture as there were no remnants present of the flexor tendon of the thumb. In his letter of October 6, 1999, to Ramona McEnaney, claims representative for Fireman's Fund, Dr. Harbin stated that he was not certain at this point whether claimant had suffered a nerve injury of the thenar eminence from this accident, or whether this could be an old injury. He stated that he planned to continue following claimant, hoping to ascertain exactly what had occurred with the claimant.

On December 14, 1999, claimant was referred to J. Mark Melhorn, M.D., an orthopedic hand specialist, in Wichita, Kansas, for an evaluation. Dr. Melhorn examined claimant in order to check claimant's left thumb laceration and to rule out FPL laceration.

At preliminary hearing, claimant testified that he had had no prior problems with his left hand or thumb, no prior injuries, no loss of strength and no loss of use before this accident. The Administrative Law Judge, after awarding benefits, advised claimant that, should it somehow develop from claimant's history that he had suffered a prior injury to the hand or thumb, then his benefits would stop as of that moment, and respondent would have the right to recover from the Workers Compensation Fund any monies paid pursuant to the preliminary order.

Respondent appeals from that decision, contending that the additional surgeries, including the exploration of the thumb flexor tendon and the carpal tunnel release, are surgeries necessitated by some prior injury suffered by claimant or some prior physical condition not related to the injury of September 5, 1999.

At preliminary hearing, however, respondent admitted that claimant met with personal injury by accident on September 5, 1999, arising out of and in the course of claimant's employment, but went on to state that there was a dispute as to the "nature and extent."

Based upon the evidence presented and based upon the representations of counsel at preliminary hearing, the Appeals Board finds this is not an appealable matter from a

preliminary hearing. K.S.A. 1999 Supp. 44-551 limits appeals from preliminary hearings to situations where it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested at preliminary hearing. K.S.A. 1999 Supp. 44-534a lists certain disputed issues which are considered jurisdictional, including whether an employee suffered an accidental injury, whether the injury arose out of and in the course of employment, whether notice is given or claim timely made, and whether certain defenses apply. These issues are considered jurisdictional and subject to review by the Board on appeal from preliminary hearings.

However, a claimant's entitlement to medical treatment, a claimant's entitlement to temporary disability benefits, and the nature and extent of the injury are not issues which are appealable from a preliminary hearing order. Therefore, respondent's appeal in this matter should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated December 22, 1999, remains in full force and effect, and the appeal of the respondent in this matter should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February 2000.

BOARD MEMBER

c: David L. Serrault, Salina, KS
Terry J. Torline, Wichita, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director